In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 491

C. H. CROSS d/b/a CROSS POULTRY COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 19-21) is reported at 346 F. 2d 165. The Board's Decision and Order (Pet. 22-47) are reported at 148 NLRB No. 90.

JURISDICTION

The judgment and decree of the court of appeals (Pet. 21-22) were entered on May 31, 1965. The pe-

tition for a writ of certiorari was filed on August 24, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the operation of a wholly intrastate business that sells its products to firms engaged in interstate commerce "affects commerce" within the meaning of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at pp. 53-54 of the petition for certiorari.

STATEMENT

The Board found that petitioner violated Section 8(a)(1) of the National Labor Relations Act by interrogating employees concerning their union activities, by threatening to discharge them for those activities, and by threatening to close the plant if the Union [1] was selected as their representative. The Board further found that petitioner violated Sections 8(a)(3) and (1) of the Act by discharging two employees because of their union activities. The Board ordered petitioner to cease and desist from the unfair labor practices found, and to reinstate with

[1] Local 525, Amalgamated Meat Cutters & Butcher Workmen of North Carolina, AFL-CIO.

back pay the two employees he had discriminated against (Pet. 22-24, 31-45). The only issue raised here is whether the Board had jurisdiction over petitioner. The facts pertinent to this issue are as follows:

Petitioner, C. H. Cross, maintains a plant at Raleigh, North Carolina, for processing poultry products. In the year ending December 31, 1963, petitioner produced, sold, and distributed poultry products valued at more than $500,000. Although no poultry products produced by petitioner are sold outside North Carolina, petitioner's customers do make substantial out-of-state sales of other products. During the above period, petitioner sold poultry products valued at more than $300,000 to North State Provision Company, Inc. (a wholesaler of poultry, beef, veal, pork, and other products), which, during the same period, sold and shipped products valued at more than $50,000 to points outside the State of North Carolina. Also during this period, petitioner sold products valued at more than $50,000 to Colonial Stores, Inc., which maintains retail stores in Virginia, North Carolina, and other States; in the year ending December 31, 1963, Colonial Stores' gross sales exceeded $10,000,000 (Pet. 25, 48-49).

Based on these facts, the Board found that petitioner's operations affected commerce within the meaning of Section 2(7) of the Act, and that they met the Board's self-imposed standards for the exercise of its statutory jurisdiction (Pet. 23, n. 2, 26-28). The court of appeals sustained the Board's findings and enforced its order (Pet. 19-21).

ARGUMENT

Petitioner's basic contention is that, since his products were produced within the State of North Carolina and sold only to customers within that State, and the customers could not ship them out of the State because they were not marked in accordance with the federal poultry inspection law, there is no basis for finding that his operations affect commerce within the meaning of the Act. This contention is patently without merit. As the Board pointed out (Pet. 23, n. 2):

> Though [petitioner's] products may never enter the stream of interstate commerce they nevertheless affect such commerce through their competition with federally inspected poultry which crosses State lines, see *Wickard* v. *Filburn*, 317 U.S. 111, and because a labor dispute at [petitioner's] plant would tend to burden the operations of its customers who are engaged in commerce by cutting off a source of supply. See *Reliance Fuel Oil Corp.* v. *National Labor Relations Board*, 371 U.S. 224.

Also without merit is petitioner's further contention that the Board's jurisdictional finding was defective because the Board failed to establish that a work stoppage at his operation would, in fact, burden interstate commerce. As the court below noted (Pet. 20-21), such a contention was expressly rejected in *National Labor Relations Board* v. *Reliance Fuel Corp.*, 371 U.S. 224. " 'Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately be-

fore the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce.' *Polish Alliance* v. *Labor Board*, 322 U.S. [643], at 648." 371 U.S. at 226.[2]

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1965.

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[2] *National Labor Relations Board* v. *Benevento*, 297 F. 2d 873 (C.A. 1), on which petitioner relies, was decided prior to this Court's decision in *Reliance, supra.* See the First Circuit's second decision in *Benevento*, 316 F. 2d 224, where, after this Court's decision in *Reliance*, the jurisdiction of the Board was sustained.

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